

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

8 RONALD COLLINS, ) 3:16-cv-00111-MMD-WGC  
9 Plaintiff, )  
10 vs. ) ORDER  
11 JOSHUA COLLINS, *et al.*, ) Re: ECF No. 107  
12 Defendants. )  
13

14 Before the court is Plaintiff's Motion for Order Ordering Claims Three and Four Admitted for  
15 Defendants Failure to Deny (ECF No. 107).

16 **BACKGROUND**

17 Plaintiff contends that Defendants' Answer (ECF No. 44) failed to address or "did not answer  
18 claims three or four" of his Amended Complaint. (ECF No. 2.)<sup>1</sup>

19 Defendants have opposed Plaintiff's motion, stating their answer filed on February 12, 2018,  
20 "den[ie]d all claims . . . ." Defendants state Plaintiff is "confused as he is claiming that Defendants'  
21 Answer to the Amended Complaint does not reference Counts III and IV. Which is incorrect and correct  
22 all at the same time. Defendants clearly state that there is no Count III in Plaintiff's Amended Complaint  
23 (*Id.* at 12:26). Plaintiff's Amended Complaint also does not have a section divided into a Count IV  
24 (ECF No. 20)." (ECF No. 119 at 2.)

25 ///

26  
27 <sup>1</sup> Plaintiff's motion (ECF No. 107 at 1) identifies his Amended Complaint as Docket #11. Docket #11  
28 is Plaintiff's motion to file a "longer than normal Amended Complaint." The court granted Plaintiff's motion  
to file excess pages and directed the Clerk to file the Amended Complaint. (ECF No. 19.) The Amended  
Complaint was then docketed as ECF No. 20.

1 Plaintiff replies by making reference to his Amended Complaint (ECF No. 20) which he contends  
2 asserted separate counts identified as “Claim 3 and 4 pled separately.” (ECF No. 120 at 2.) Plaintiff  
3 attaches excerpts of his Amended Complaint asserting what is titled “Count III” and “Count III.” (*Id.*  
4 at 10, 11.)

### 5 DISCUSSION

6 The court has difficulty following Defendants’ argument that “there is no Count III in Plaintiff’s  
7 Amended Complaint” and that the Amended Complaint “also does not have a section divided into a  
8 Count IV,” citing ECF No. 20 (ECF No. 119 at 2). While there is no Count III or Count IV in  
9 Docket No. 20 itself, there are two additional counts, one in Docket No. 20-1, “Count III” at ECF No.  
10 20-1, pp. 1-22; and “Count III” at ECF No. 20-2, pp. 1-17.

11 Defendants further state that “Plaintiff’s confusion may stem from the differentiation made in  
12 the Amended Screening Order that specifies and separates out claims and/or counts. However,  
13 Defendants do not answer and/or oppose what is stated within Screening Orders as that is not the proper  
14 procedure.” (ECF No. 119 at 2.)<sup>2</sup>

15 While Defendants are correct a party does not “answer” a Screening Order, in this matter the  
16 Screening Order made reference to these particular counts which appeared in Plaintiff’s proposed  
17 Amended Complaint. The court (twice) stated Counts III and IV were being allowed to proceed:

18 In addition to the deliberate indifference claim discussed above, the Court  
19 refers back to and adopts the analysis in the prior screening order  
20 (ECF No. 8), and will allow Plaintiff to proceed on the following:  
21 (1) Count I First Amendment retaliation and Eighth Amendment  
22 excessive force claims against Defendant Collins; (2) Count II Eighth  
23 Amendment excessive force claim against Defendant Hightower;  
(3) **Count III** Eighth Amendment deliberate indifference to serious  
medical needs claim against Defendants Gedney, Marr, and Aranas; and  
(4) **Count IV** Fourteenth Amendment due process claim against  
Defendants Rexwinkle, LeGrand, McDaniel, Keith, Baca, Deal, Walsh,  
Irvin, Foster, and Skulstad. (*See* ECF No. 8 at 18-20.) \* \* \*

24 (ECF No. 19, p. 6 at ll. 15-19; emphasis added.)

25 ///  
26 ///

---

27  
28 <sup>2</sup> There was no “Amended Screening Order.” There was a Screening Order on the Amended Complaint  
(ECF No. 19) but no Amended Screening Order.

1 The component of the Screening Order titled "Conclusion" (Paragraph V) stated in pertinent part  
2 with regard to Counts III and IV as follows:

3 It is further ordered that **Count III**, alleging deliberate indifference  
4 related to a growth on Plaintiff's hand, will proceed against Defendants  
Gedney, Marr, and Aranas.

5 It is further ordered that **Count III**, alleging deliberate indifference  
6 related to treatment of Plaintiff's back, will proceed against Defendants  
Gedney, Marr, and Aranas.

7 It is further ordered that **Count IV**, alleging due process violations, will  
8 proceed against Defendants Rexwinkle, LeGrand, McDaniel, Keith, Baca,  
Deal, Walsh, Irvin, Foster, and Skulstad.

9 (ECF No. 19, p. 7 at ll. 19-25; emphasis added.)

10 It would appear that rather than Plaintiff being mistaken, it would be the Defendants who have  
11 apparently overlooked the allegations which were permitted by the court to proceed (ECF No. 19 at pp.6-  
12 7) and which were a component of Plaintiff's Amended Complaint at ECF No. 20-1 (Count III) and  
13 ECF No. 20-2 (Count IV).

14 Defendants shall have to and including **Tuesday, September 25, 2018**, to supplement their  
15 opposition (ECF No. 119) to explain this apparent oversight.

16 DATED: September 18, 2018.

17  
18   
19 WILLIAM G. COBB  
20 UNITED STATES MAGISTRATE JUDGE  
21  
22  
23  
24  
25  
26  
27  
28